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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,868

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EXAMINER

FREEMAN, JOHN D

ART UNIT

PAPER NUMBER

1794

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/565,868	Applicant(s) FORLONI ET AL.	
	Examiner John Freeman	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 15-18, and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Murata et al. (US 4,496,714).
3. Murata et al. disclose a polyester and laminates containing said polyester (col 1 ln 8-12). The polyester includes units of aromatic polyesters (col 2 ln 10-57). The laminates can take the form of a film (col 14 ln 11-14).
4. The laminates may take the form of (B)/(A)/(C)/(D) wherein A is the polyester of Murata's invention (col 12 ln 39-56). (B) and (C) are "adherend layers" (col 12 ln 43-44), said adherend materials include ethylene-vinyl alcohol and polyester (col 12 ln 1-21). (B) can be polyethylene terephthalate, an aromatic polyester (col 27 ln 52-54). (D) can be polyethylene or polypropylene (col 12 ln 50-52).
5. Murata further teaches biaxial stretching of the laminates to improve mechanical strength and other properties (col 14 ln 20-22).
6. Regarding the modulus properties of the film as found in the present claims 15-18, the examiner takes the position that the film described by Murata, which includes aromatic polyesters, inherently possesses the modulus properties disclosed by Applicant.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claims 19-26 and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murata et al. (US 4,496,714) in view of Murschall et al. (US 2003/0108755) in view of Bassett et al. (US 3,969,176).
9. Murata discloses polyester-containing laminates as previously explained.
10. Murata is silent with regard to heat-setting the film and the use of a tenter frame to biaxially stretch the films.

Art Unit: 1794

11. Murschall et al. (hereafter Murschall) disclose a biaxially oriented polyester film [0001]. The process of producing the film includes:

- a. coextrude the layers,
- b. biaxially orient the film,
- c. and heat set the oriented film [0082-5].

12. Murschall teaches that the film can be simultaneously stretched in both direction with a tenter frame [0091].

13. Bassett et al. disclose that biaxially oriented films are heat set to have low shrinkage at elevated temperatures (col 1 ln 51-53).

14. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the general process as taught by Murschall to create a polyester film having low shrinkage at elevated temperatures.

15. Regarding the free shrink values in the present claims 19-22 and 26, and shrink tension values in claims 23-24, the examiner takes the position that the film described by Murata, which includes aromatic polyesters, upon biaxially stretching and heat setting as disclosed by Murschall, would intrinsically possess the values disclosed by Applicant.

16. Claims 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murata et al. (US 4,496,714).

17. Murata discloses polyester-containing laminates as previously explained.

18. Murata is silent with regard to the multilayer structures as claimed by Applicant.

19. Given Murata's disclosure, which states the polyester of his invention can be used as an adhesive (col 12 ln 39-43), as well as multilayer films (col 12, ln 49 and 55-56) having polyolefins and heat sealable layers (col 13 ln 3), one of ordinary skill in the art would easily contemplate the various structures of the present claims. For example, one of ordinary skill would recognize that multiple polyolefin layers would improve the moisture-barrier properties of the film, and an outer layer of polyethylene would make the film heat sealable, as they are intrinsic properties to polyolefins.

Art Unit: 1794

20. At the time of the invention, it would have been obvious to one of ordinary skill in the art to add multiple polyolefin cores to the film to increase the moisture-barrier properties, a heat sealable outer layer of polyethylene, and use various tie layers to maintain the structural cohesiveness of the film.

21. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murata et al. (US 4,496,714) in view of Laird et al. (US 3,541,040).

22. Murata discloses polyester-containing laminates as previously explained in paragraphs 16-20.

23. Murata is silent with regard to an anti-fog agent in the polyolefin core layer.

24. The use of anti-fog agents are well known in the art of packaging. For example, Laird discloses that polyolefin films often fog due to its inherent moisture-barrier properties (col 1 ln 50-64). Laird adds agents to create an anti-fog film (abstract).

25. At the time of the invention, it would have been obvious to one of ordinary skill in the art to include anti-fog agents in the polyolefin material to create packaging that does not fog.

26. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murata et al. (US 4,496,714) in view of Laird et al. (US 3,541,040).

27. Murata discloses polyester-containing laminates as previously explained in paragraphs 2-6.

28. Murata is silent with regard to an anti-fog agent in the polyolefin layer.

29. The use of anti-fog agents are well known in the art of packaging. For example, Laird discloses that polyolefin films often fog due to its inherent moisture-barrier properties (col 1 ln 50-64). Laird adds agents to create an anti-fog film (abstract).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to include anti-fog agents in the polyolefin material to create packaging that does not fog.

Art Unit: 1794

30. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murata et al. (US 4,496,714) in view of Banaszak et al. (US 6,423,421).
31. Murata discloses polyester-containing laminates as previously explained.
32. Murata is silent with regard to irradiating the laminates.
33. The use of radiation on films was well-known at the time of the invention. For example, Banaszak discloses a multilayer film crosslinked by irradiation at a level from 10-200 kiloGray (col 18 ln 5-20). Banaszak further discloses the irradiation process improves impact strength.
34. At the time of the invention, it would have been obvious to one of ordinary skill in the art to irradiate Murata's laminate within the range disclosed by Applicant to crosslink the polymers of the film and improve the impact resistance of the film.

Response to Arguments

35. Applicant's arguments filed 31 October 2008 have been fully considered but they are not persuasive.
36. Applicant provides a thorough reading of Murata and concludes "the odds of one of skill in the art reviewing Murata et al. and arriving at Applicant's claimed invention are only one in 1152" (p16). The examiner agrees with Applicant's factual analysis: the odds of randomly choosing the components claimed without regard to any features seems to be 1 in 1,152. The examiner disagrees, however, with Applicant's ultimate conclusion, namely that because an artisan of ordinary would be unlikely to randomly choose each of the claimed components the claimed invention is novel and nonobvious over Murata. Firstly, such reasoning necessarily implies that each combination of the 1,152 would be novel and nonobvious, except perhaps for explicitly disclosed examples. However, "applicant must look to the whole reference for what it teaches. Applicant cannot merely rely on the examples and argue that the reference did not teach others." *In re Courtright*, 377 F.2d 647, 153 USPQ 735,739 (CCPA 1967). Finally, the examiner's position remains that the 102 rejection is proper given that, by Applicant's own admission as set forth in Table III and page 15 lines 1-3 of the amendment filed 31 October 2008, Murata does disclose

Art Unit: 1794

multilayer thermoplastic film as presently claimed. Given that the choice of layer structure is 2 of 12 and the choice of polymer for each layer is 1 in 4, 1 in 4 by 1 in 3, and 2 in 4, which do not provide a vast number of choices but rather are each small groups from which to choose, it is the examiner's position that the choices that must be made to arrive at the presently claimed invention are sufficiently limited or well delineated so as to make the anticipation rejection of record proper

37. Applicant notes the analysis of the odds does not take into consideration whether Murata's composite exhibits Applicant's modulus limitations (p18). The examiner maintains that since Murata's composite is the same as presently claimed, it inherently possesses the modulus properties disclosed by Applicant.

38. As no specific features of the secondary references are given, other than those described for Murata, the examiner maintains the combinations are proper.

Conclusion

39. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. lawnami '696 and Hamada JP '015 disclose laminates having core layers of EVOH and outer layers of polyester and polyolefin.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1794

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Freeman whose telephone number is (571)270-3469. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571)272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John Freeman
Examiner
Art Unit 1794

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Examiner, Art Unit 1794

/Callie E. Shosho/
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